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Circular Letter No.: 03-02-431

TO: Nursing Facility Administrators

FROM: Paul I. Dreyer, Ph.D., Director

DATE: February 3, 2003

RE: Informal Dispute Resolution

As you are aware, current federal regulations (42 CFR §488.331) require each state to implement an informal dispute resolution (IDR) process that allows facilities to contest deficiencies without initiating a formal administrative appeal. The regulations do not prescribe how the process must be established or implemented. Each state has the discretion to establish its own procedure.

Currently in Massachusetts, a facility may request that the Department of Public Health Division of Health Care Quality (DHCQ/the Division) conduct an informal review of a cited deficiency. The documentation provided by the facility is reviewed by the surveyor, a survey Manager, and, depending on the type of survey, either the Assistant Director of Survey Operations or the Compliance Manager, to determine whether a change is appropriate.

Based on information regarding the IDR process in other states, Massachusetts is planning to broaden the process *for nursing facilities*, on a pilot project basis, by creating a 14-member *committee* (7 voting members and their alternates) to review appeals. Committee members will include representatives of the State ombudsman, providers and DHCQ. A DHCQ representative will chair the Committee.

The attached materials describe the new pilot IDR process in detail. To summarize, a facility requesting an IDR should submit a written statement concerning its position on the deficiency being challenged. The IDR may include any documentation that the facility believes the surveyors did not see or consider, and any other materials that the facility believes will support its position that the facts and/or conclusions drawn by the surveyor were incorrect. The committee will review materials submitted by the facility and the 2567 being challenged. Based

upon its review of these materials, the committee may recommend that a deficiency be sustained or deleted. If it is sustained, it may be left at the tag written, may be moved to a more appropriate tag, or combined with another deficiency. If an example/s within a deficiency are deleted, the scope and severity may be reduced.

At the review committee meeting, all members (voting members and alternates) may participate in the discussion. Only voting members may vote. If any member has a conflict of interest concerning a challenged deficiency, he/she is to declare that conflict and will not participate in the discussion or voting. Members of the public, Division staff, facility representatives, and other interested parties may attend and observe, but may not participate in the discussion. Recommendations will be made based on committee consensus. If consensus cannot be reached, a recommendation will be made by a majority vote. In the event of a tie vote, the issue is referred back to the Division for a decision. **Any recommendation of the committee is subject to the final approval of the Division. The Division of Health Care Quality retains final agency action; the committee makes recommendations only.**

During the 9-month pilot project, which will begin in March, the Division will track the number of sustained and deleted deficiencies/tags under the pilot project process for comparison with the rates of sustained and deleted deficiencies/tags for reviews **for nursing facilities** conducted prior to implementation of the IDR pilot project process. The Division will track the timeliness of the reviews. The Division will issue a questionnaire to providers who participate in the review committee process to obtain feedback about their experience with the pilot program. At the end of the pilot project, the Division will solicit feedback from the review committee members as well. All of this data will be used to assess the usefulness and efficacy of the pilot project in providing a more open, cooperative and educational IDR process. Based on this assessment, the Division will decide whether to implement the IDR committee process as the standard process for IDR for nursing facility deficiencies. Pending this decision, the committee review process will continue.

Beginning with deficiency statements issued on February 19, 2003, *nursing facilities* may submit, **along with the required Plan of Correction**, a request for IDR by the committee. Additional details regarding the process are attached. If you have questions about the committee process, please contact the Survey Manager for your region or ask the surveyors in your facility during survey.

Attachments:
Description of IDR Pilot Project (1 pg.)
NF Procedures for Requesting IDR by the Committee (2 pp.)
Committee Operating Rules (2 pp.)
List of DHCQ Regional LTC Managers

Division of Health Care Quality
Nursing Facility (NF) Informal Dispute Resolution (IDR) Committee
Pilot Project

Active participation and open communication with the providers is encouraged during the course of all surveys. The provider may furnish clarifying information at any time.

Members of the survey team hold at least one status meeting with the Administrator and the Director of Nursing Services during the survey. These meetings include team observations, including potentially significant issues that are then known, responses to provider questions and, if needed, additional information may be provided.

If the provider has questions and concerns about the survey, these should be discussed with the team coordinator. If there is no resolution, the Administrator should call the team's supervisor or designee.

An on-site exit conference is held to present an oral summary of the team's findings. Representatives from both the Residents Council and the Executive Office of Elder Affairs Ombudsman's Office may be present.

The intent of the Informal Dispute Resolution Committee Process is to provide an open, informal opportunity to resolve disputes related to NF survey deficiencies. The review is limited to whether or not a deficiency with a requirement exists.

The Informal Dispute Resolution Committee will be a pilot program for 9 months (March 3, 2003 through November 28, 2003). An assessment will be conducted by DHCQ during December, 2003. The assessment will include a review, at a minimum, of timeliness of reviews, numbers and percentages of sustained and deleted deficiencies and tags, summary of comments by participants (providers and committee members), etc. for reviews conducted during June through November, 2003 (the final 6 months of the 9-month pilot project). A decision regarding continuation of the review committee process will be made by DHCQ on or before January 30, 2004. The committee review process will continue pending the results of the assessment and decision by DHCQ.

Procedures for Nursing Facility (NF) Informal Dispute Resolution (IDR) by Committee

1. Additional contact with survey team member(s)/leader after the exit conference, but before the deficiency list is sent to the facility is encouraged. Teams/supervisory personnel are to make accurate adjustments to compliance determinations if facility staff provide acceptable, additional information to refute the finding of non-compliance.

2. The Division shall notify the facility of the right to request informal dispute resolution (IDR) by the committee at the same time that the Division provides the facility with the statement of deficiencies. In the case of a follow-up survey, the facility may request IDR of only deficiencies that were cited on the follow-up survey but not on the original survey. The facility may not request IDR of deficiencies cited on the original survey that were cited as not corrected on the follow-up survey.

3. Within 10 calendar days of receipt of a statement of deficiencies (CMS 2567) a facility may request IDR of a specific deficiency(ies) by filing a written request along with the required "Plan of Correction" . The facility shall submit seven (7) copies of the request and any attachments.

4. Requests for extension of time to submit a Plan of Correction or to request IDR shall be granted only for the number of days exceeding ten that it took the Division to mail the deficiency list to the provider.

5. **The facility's request for an IDR by the committee shall**:

   A. Identify the specific deficiencies for which the facility is requesting review.

   B. Include a written statement explaining why the facility believes the deficiency should not have been cited. If the statement is part of the Plan of Correction (PoC), it should be formatted so that each deficiency requested for review is on a separate page of the 2567L. If attachments are to be submitted, they may be referenced within the PoC for each deficiency.

   C. If attachments are submitted, clearly identify, label and cross-reference the attachments to the tag being appealed. Highlight or otherwise notate what is relevant to the deficiency.

   D. If attachments are included, indicate whether the attachments were provided to surveyors at the time of survey.

   E. Indicate whether dates on attachments were prior to or after the survey.

F. In disputing scope and severity, provide specific justification based on the findings in the deficiency. A statement that scope and severity is disputed without supporting rationale will not be reviewed. **Note that scope and severity may only be challenged for deficiencies constituting substandard quality of care or immediate jeopardy.**

G. Include a narrative explaining the relevance of any facility forms (specific to survey findings) used in documentation. Providing blank forms does not support how the form was completed at the time of the survey.

H. Block out or delete resident/surveyor/facility names on the 2567L/PoC and attachments and replace with the sample number as stated in the deficiency or other identifiers.

I. Provide the name and phone number of an individual at the facility whom the Division may contact concerning the request.

Nursing Facility (NF) Informal Dispute Resolution (IDR) Committee Operating Rules

1. The 14 member Committee will be comprised of 7 voting or primary members and their alternates. The members include: 1 Board of Registration of Nursing Home Administrators representative and alternate; 3 representatives of profit and nonprofit nursing facilities and alternates; 1 Ombudsman and alternate; and 2 Division of Health Care Quality staff representatives and alternates.

2. A DHCQ staff representative who is a voting member of the committee will chair meetings.

3. Members must try to come to consensus when deciding on deficiencies or tags. The review is limited to whether or not a deficiency with a requirement exists. If consensus cannot be reached, a vote will be taken. Decisions are made by majority vote. If votes are tied, the Division of Health Care Quality will make the final decision.

4. It is the responsibility of committee members to communicate and share with their peers and counterparts information that may help to improve the overall process for stakeholders.

5. Only primary members may vote, unless the alternate member is taking the voting place of the primary member. All members may participate in discussions.

6. Any member (voting or alternate) with a conflict of interest must declare the conflict and withdraw from the relevant discussion, voting and decision making.

7. Members should not bring personal issues to the meetings.

8. Facility-specific deficiency information should be kept confidential.

9. Facility/surveyor identifications will be removed from IDR requests presented to the committee.

10. Members should refer to the relevant state licensure or federal certification regulations to assure reviews are decided correctly.

11. The committee will meet initially at least once a month or more frequently as the workload dictates.

12. The review shall be conducted within thirty calendar days of receipt of the review request and supporting documentation.

13. The reviewers shall rely on the written record (CMS 2567 and documentation supplied by the facility).

14. The Committee will not add or increase the number of tags. It is permissible to recommend moving a cite to a different tag number. However, it is at the Division's discretion to add or increase the number of tags.

15. During the pilot program, the Committee will review tags cited during annual surveys, revisits, or complaints for nursing facilities. All other informal reviews will be conducted by Division staff without committee involvement.

16. The Division of Health Care Quality retains final agency action; the committee makes recommendations only.

17. The Division of Health Care Quality will finalize and mail the decision letter to the facility within 5 *business* days of the committee review. The decision shall summarize the deficiency, the facility's request, and the rationale for the decision. The summary shall be maintained as a part of the permanent record.

18. Failure of the Division to meet any of the time frames specified herein shall not invalidate the deficiency.

19. Within 5 *business* days of receipt of the notice of the final decision, the facility must submit a new PoC, when required, to DHCQ.

20. Subsequent to issuing a written decision regarding the disputed deficiency(ies), the Division will send the facility a questionnaire regarding the facility's experience with the committee review process.

February 2003

Division of Health Care Quality
Long Term Care Regional Managers

Region	Manager	Phone/email
Metro	Katie Anno	(617)753-8216 Katie.Anno@state.ma.us
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South	Jill Mazzola	(617)753-8224 Jill.Mazzola@state.ma.us
West	Ellen Flinter	(617)753-8214 Ellen.Flinter@state.ma.us

If you need assistance in contacting one of the Regional Managers, please call Pat Mazzone at (617)753-8220.